THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.10200 OF 2007

DATED JULY, 2007

BETWEEN:

Badri Chandraiah

… Petitioner

AND

The District Collector, Nellore, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10200 OF 2007

ORDER:

The petitioner filed the writ petition challenging the order, dated 28.04.2007, of second respondent, namely, Sub Collector, Gudur, whereby and whereunder the order passed by third respondent under Section 6 of A.P.Land Encroachment Act, 1905 (the Act, for brevity) was confirmed. Be it noted, in order, dated 31.01.2007, third respondent ordered eviction of petitioner from a piece of land admeasuring 34'.0" x 25'.0" forming part of R&B Road in Field No.68 situated at Gudur in Nellore District. Be it also noted, the said order of third respondent was preceded by Notice under Section 7 of the Act.

The petitioner herein along with family occupied plot No.20 admeasuring 17 ankanams (136 square yards) in survey No.1620-4 at Gudur in 1978. He constructed house thereon, established oil rotary on the ground floor and eking out livelihood and staying there with his family. On 12.04.1987, revenue authorities statedly served a notice on the petitioner informing that occupation would be regularized on payment of market value of Rs.425/-. He paid the amount and thereafter developed the property. Thereafter, he was also issued house site patta bearing Rc.B.No.436/1986. He claims that by reason of payment of money, he became absolute owner of the property. Third respondent initiated action and issued notice under Section 7 of the Act alleging that petitioner encroached the Government land. The petitioner submitted explanation. Rejecting the same, eviction order was passed, against which the petitioner unsuccessfully filed the Appeal.

Learned counsel for petitioner, Sri S.A.Chari, strenuously submits that as a first step, authorities have to first determine whether the land in occupation of a person is a Government land or not. According to him, as the petitioner paid the regularization fee of Rs.425/- in 1987, he became owner and he cannot be treated as an encroacher. Secondly, he submits that as the petitioner is in occupation of the land in 1978, respondents cannot resort to act for evicting the petitioner in highhanded manner and therefore, only remedy is to file a suit for declaration of title. Learned counsel relied on the decision of Supreme Court in **Government of A.P. v T.Krishna Rao**[1]. **Per contra**, learned Assistant Government Pleader submits that the Sub Collector, the appellate authority, found that the petitioner raised constructions on the land forming part of R&B road and he was not found to be in the land granted by the Government in survey No.1620-4. He also points out that as this being a question of fact, a writ petition would not lie. According to learned Assistant Government Pleader, the decision in **T.Krishna Rao** (supra) has no application as the petitioner was admittedly granted assignment of house patta in respect of some land,

whereas he occupied R&B poramboke land.

Second respondent, who is appellate authority, dismissed the Appeal mainly on the ground that when the petitioner was assigned land in 1620-4, he was found to have encroached upon the land, which is R&B road. Further, as seen from the order passed by Mandal Revenue Officer under Section 6 of the Act, the petitioner was ordered to be evicted from piece of land admeasuring 34'.0" x 25'.0" in Field No.68, which is R&B poramboke land, where he has constructed a building. The appellate authority, dealing with this aspect, observed as follows.

> The main contention of the appellant is that the site, which is in their occupation and enjoyment, is not R&B road poramboke, that the Revenue Authorities granted house site patta for the site in favour of the appellant as per the occupation at the time of grant on payment of market value, that they are in possession and enjoyment of the site from the date of grant without any objection, that the site is not R&B road poramboke and that this case will not come under the purview of the Act III of 1905.
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> It is revealed from the records of the Mandal Revenue Officer, Gudur that the Revenue and R&B officials have conducted joint survey of the land and identified the encroachments in the R&B road. According to the said joint survey, the appellant is in encroachment of the R&B road. The Mandal Revenue Officer, Gudur, issued notice to the appellant as stipulated under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 calling for the explanation of the appellant giving the details of the land under encroachment. The appellant has also submitted their explanation to the Mandal Revenue Officer and the Mandal Revenue Officer examined it. Finally, the Mandal Revenue Officer, Gudur, issued orders under Section 6 of the said Act directing eviction of the encroachment of the appellant.
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> As observed above, it is evident that the appellant is in encroachment of R&B Road poramboke in Field No.68 upto the extent mentioned in the orders of the Mandal Revenue Officer, Gudur. He is not in the land granted on patta by the government in S.No.1620/4 as claimed by the appellant. Encroachment in R&B road in any way is highly objectionable and liable for eviction summarily. Hence, this case comes under the purview of the Act III of 1905 and the orders issued by the Mandal Revenue Officer, Gudur, under Section 6 of the said Act are in conformity with the provisions of the Act III of 1905.

It is now well settled that a road is meant for the people to pass and re-pass and no part of the road can be allowed to be encroached upon by any person, even if such person claims an inchoate right by reason of assignment of land, which is adjacent to R&B road. Even according to petitioner, as disclosed in the affidavit accompanying the writ petition, he occupied the land in survey No.1620-4 admeasuring 136 square yards, but he is not ordered to be evicted from a piece of land in Field No.68, which is R&B road. In such a situation, reliance placed on **T.Krishna Rao** (supra) is

wholly misconceived. Even otherwise, the principle canvassed by learned counsel that in every case of disputed title, the Government should be compelled to go to civil Court to seek declaration of title is not of universal application. In **Raidurg Cooperative House Building Society Limited v Government of Andhra Pradesh**[2], this Court considered this aspect of the matter. After referring to **T.Krishna Rao** (supra), **Special Deputy Collector v K.L.Bapuji**[3] and **Shivalingappa v State of Andhra Pradesh**[4], this Court laid down that longstanding possession is one of the factors and the same cannot be the only factor to compel the Government to go and avail remedy of civil suit. As observed by this Court in **Shivalingappa** (supra), the decision in **T.Krishna Rao** (supra) does not lay down any general law that whenever a person is sought to be evicted from the land claiming legal possession, the Government should be compelled to go to civil Court. As observed supra, in the present case, the petitioners were assigned the land in 1978 but they encroached upon the R&B poramboke land, which is certainly illegal. Therefore, the illegality committed by petitioner cannot be validated in exercise of extraordinary jurisdiction.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

18 .07.2007.
Note:
Issue order copy by 23.7.2007.
(By order)
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[1] AIR 1982 SC 1081
[2] 2003 (3) ALD 2
[3] 1984 (1) APLJ 219 (DB)
[4] 1988 (1) ALT 716